HAND DELIVERED

February 6, 2006

Gene Terland – Acting State Director
Utah State Director, Bureau of Land Management
440 West 200 South, 5th Floor
P.O. Box 45155
Salt Lake City, Utah 84145-0155

Re: Protest of Bureau of Land Management's Notice of Competitive Oil and Gas Lease Sale Concerning 64 Parcels in Emery, Uintah, Piute, and San Juan Counties

Greetings,

In accordance with 43 C.F.R. §§ 4.450-2 and 3120.1-3, the Southern Utah Wilderness Alliance, the Natural Resources Defense Council, The Wilderness Society, and the Grand Canyon Trust (collectively referred to as "SUWA") hereby protest the February 21, 2006 offering, in Salt Lake City, Utah, of the following 64 parcels in the Monticello, Vernal, Richfield, and Price field offices:

Monticello field office: UT 0206-229, UT 0206-230, and UT 0206-231 (3 parcels)

Vernal field office: UT 0206-226 (1 parcel)

Richfield field office: UT 0206-011 (1 parcel)

Price field office: UT 0206-102, UT 0206-103, UT 0206-104, UT 0206-105, UT 0206-106, UT 0206-107, UT 0206-109, UT 0206-143, UT 0206-144, UT 0206-145, UT 0206-146, UT 0206-147, UT 0206-148, UT 0206-149, UT 0206-151, UT 0206-152, UT 0206-153, UT 0206-154, UT 0206-155, UT 0206-156, UT 0206-157, UT 0206-158, UT 0206-159, UT 0206-169, UT 0206-170, UT 0206-171, UT 0206-172, UT 0206-173, UT 0206-174, UT 0206-175, UT 0206-176, UT 0206-177, UT 0206-178, UT 0206-179, UT 0206-180, UT 0206-181, UT 0206-182, UT 0206-183, UT 0206-184, UT 0206-185, UT 0206-186, UT 0206-187, UT 0206-188, UT 0206-189, UT 0206-190, UT 0206-198, UT 0206-199,

UT 0206-200, UT 0206-202, UT 0206-203, UT 0206-205, UT 0206-206, UT 0206-207, UT 0206-208, UT 0206-209, UT 0206-210, UT 0206-211, UT 0206-212, UT 0206-213, and UT 0206-214 (59 parcels)

As explained below, the Bureau of Land Management's (BLM's) decision to sell the 64 parcels at issue in this protest violates the National Environmental Policy Act, 42 U.S.C. §§ 4321 et seq. (NEPA), the National Historic Preservation Act, 16 U.S.C. §§ 470 et seq. (NHPA), and the Endangered Species Act, 16 U.S.C. §§ 1531 et seq. (ESA), and the regulations and policies that implement these laws.

In sum, SUWA requests that BLM withdraw these 64 lease parcels from sale until the agency has fully complied with NEPA, the NHPA, and the ESA.

The grounds of this Protest are as follows:

A. Leasing the Contested Parcels Violates NEPA

1. Inadequate Pre-Leasing NEPA Analysis

NEPA requires that the BLM prepare a pre-leasing NEPA document that fully considers and analyzes the no-leasing alternative before the agency engages in an irretrievable commitment of resources, i.e., the sale of non-no surface occupancy oil and gas leases. Bob Marshall Alliance v. Hodel, 852 F.2d 1223, 1228-30 (9th Cir. 1988) (requiring full analysis of no-leasing alternative even if EIS not required). See Southern Utah Wilderness Alliance, 164 IBLA 118, 124 (2004) (quoting Pennaco Energy, Inc. v. U.S. Dep't of the Interior, 377 F.3d 1147, 1162 (10th Cir. 2004)) (reversing and remanding Utah BLM decision to lease seven parcels in Kanab field office because of inadequate pre-leasing NEPA analysis). See also Southern Utah Wilderness Alliance, 166 IBLA 270, 288 (2005) (reversing and remanding Utah BLM decision to lease ten parcels in Price River resource area because of inadequate pre-leasing NEPA analysis) (reconsideration pending). Importantly, BLM's pre-leasing analysis must be contained in

its already completed NEPA analyses because, as the IBLA recognized in Southern Utah Wilderness Alliance, "DNAs are not themselves documents that may be tiered to NEPA documents, but are used to determine the sufficiency of previously issued NEPA documents." 164 IBLA at 123 (citing Pennaco, 377 F.3d at 1162).

Richfield Field Office – Parcel UT 0206-011

The Richfield DNA states that the 1975 Richfield Oil and Gas Environmental Analysis Record (Richfield EAR) and 1975 Fillmore Oil and Gas Environmental Analysis Record (Fillmore EAR) adequately considered the "no-leasing alternative." Richfield DNA at unpaginated 4 (citing Richfield EAR at 26; Fillmore EAR at 11). See Richfield EAR at 128-29 (discussion of "do not allow leasing" alternative"). A review of the EARs, however, reveals that the "no-lease" alternative was summarily dismissed and was not, in fact, analyzed, considered, and evaluated. Moreover, when BLM prepared the 1982 Mountain Valley MFP, also cited in the Richfield DNA, it was not accompanied by a separate environmental impact statement or other similar NEPA analysis and thus the current leasing categories and alternatives were not considered in the land use planning context. Southern Utah Wilderness Alliance, 164 IBLA at 123-24 (noting that BLM did not consider MFPs "major federal actions" and thus agency did not prepare EIS to accompany MFP). The subsequent oil and gas NEPA analyses cited to in the Richfield DNA – the Utah Combined Hydrocarbon Leasing Regional EIS (1984) and the Oil and Gas Leasing Implementation EA for Henry Mountain and Sevier River Resources Areas (1988) – did not analyze the no-leasing alternative, but simply carried forward the decisions made in the EARs that lands were available for leasing. BLM should thus defer leasing parcel UT 0206-011 until the agency prepares an adequate pre-leasing NEPA analysis.

2. BLM Should Defer 33 of the Price field office parcels pursuant to Instruction Memorandum No. 2004-110 (Change 1) and 40 C.F.R. § 1506.1

BLM Instruction Memorandum No. 2004-100 (Change 1) "re-emphasizes the importance of considering temporary deferral of oil, gas, and geothermal leasing in those areas with active land use planning activities" such as the Price field office. This IM further directs BLM "to consider temporarily deferring oil, gas, and geothermal leasing on federal lands with land use plans that are currently being revised." The IM provides non-exclusive examples of when deferral may be appropriate – including instances where the preferred alternative would designate lands in leasing categories 2-4. The IM does not, however, in any way restrict BLM from deferring oil and gas leasing decisions to those examples. NEPA implementing regulation 40 C.F.R. § 1506.1 is consistent with this interpretation as it provides that while BLM is in the midst of an environmental analysis, such as the Price and Vernal land use planning/NEPA process, the agency must not take any action "which would . . . [l]imit the choice of reasonable alternatives." See also 40 C.F.R. § 1502.2(f) (while preparing environmental impact statements, federal "[a]gencies shall not commit resources prejudicing selection of alternatives before making a final decision (§ 1506.1)."). [1] Another section of that same regulation directs that while BLM is preparing a required EIS "and the [proposed] action is not covered by an existing program statement," that BLM must not to take actions that may "prejudice the ultimate decision on the program." 40 C.F.R. § 1506.1(c). The regulation continues that "[i]nterim action prejudices the ultimate decision on the program when it tends to determine subsequent development or limit alternatives." Id. (emphasis added). While BLM has a land use plan and NEPA analysis in place for the lands at issue in the Price

[1] BLM's historic interpretation of this regulation – found most recently in Section VII.E of the agency's land use planning handbook –confirmed this interpretation of 40 C.F.R. § 1506.1.

field office (the San Rafael RMP/EIS), the agency's own February 2000 Report to Congress – Land Use Planning for Sustainable Resource Decisions made clear that existing land use plans such as the San Rafael RMP/EIS do not accurately reflect current, unanticipated levels of interest and attention. See BLM Report to Congress – Land Use Planning for Sustainable Development (Feb. 2000), at 4, 7 (attached hereto as Exhibit 1).

A decision by BLM to restrict the application of IM 2004-100 (Change 1) and 40 C.F.R. § 1506.1 to instances where there is a potential conflict with only the preferred alternative would indicate that BLM had prejudged the outcome of the land use planning and NEPA process, in violation of NEPA. In other words, when BLM is in the midst of a land use planning process and considering alternate land uses and protections for certain tracts recently nominated for oil and gas leasing, it is entirely appropriate – and indeed mandated by NEPA – for BLM to defer leasing those lands pending completion of the land use plan. This is particularly true here, where oil and gas leasing under the San Rafael RMP/EIS would limit or eliminate from consideration alternatives in the Price DRMP/DEIS.[2]

The numbered points below identify instances where BLM should defer leasing until the Price DRMP/DEIS is finalized, in accordance with IM 2004-110 (Change 1) and 40 C.F.R § 1506.1:

1. *Labyrinth Canyon* – UT 0206-197, UT 0206-201, UT 0206-204, and UT 0206-205: The Price field office December 2004 oil and gas lease sale DNA identified these four parcels for deferral until the Price DRMP/DEIS is finalized: "Portions of these parcels are within the Labyrinth Canyon SRMA on land identified as being in ROS Class P and SPNM where special prescriptions are being proposed in the preferred alternative for the Price RMP Draft EIS. Special management prescriptions in the Draft RMP would change future methodology and analytical

[2] As IM 2004-110 (Change 1) makes clear, "[t]his policy [of deferral] may delay, but will not, in and of itself, reduce the production of energy."

approach to land management in these areas." See Price field office oil and gas lease sale DNA (December 2004) (attached as Exhibit 2). In addition, the Price December 2004 DNA noted that "[t]he cumulative impacts of leasing parcels UT 1204-196, UT 1204-200, UT 1204-203, [and] UT 1204-204 . . . when combined to the proposals in the preferred alternative of the Price RMP Draft EIS to apply special management prescriptions to these lands within the Labyrinth Canyon Special Recreation Management Area have not been fully considered in previous NEPA analysis."

The Price field office February 2006 oil and gas lease sale DNA also notes that parcels UT 0206-197, UT 0206-201, and UT 0206-204 "are located along a stretch of the Green River which is proposed as suitable for wild and scenic river status in the Price draft RMP EIS. The direct and indirect effects of the changes in leasing categories and possible special designations in the area have not been analyzed in previous NEPA documents." But see Supplemental Information for the Preliminary February 2006 List – Oil and Gas Competitive Lease Sale (arguing that these three parcels should included in February 2006 lease sale, but ignoring various levels of protection that even the preferred alternative would afford these areas [i.e., wild and scenic river designation]).

Alternative B & C would also designate the Lower Green River ACEC (including Three Canyon, a tributary to the Green River), an area BLM describes as providing habitat for "a large number of special status species" (plants and animals) and offering numerous opportunities for non-motorized recreation (canoeing, rafting, fishing, hiking, camping, picnicking, and sightseeing). Oil and gas leasing and subsequent development in this area – without protective stipulations – would harm the resources that BLM is considering protecting through ACEC designation. See Price DRMP/DEIS at 2-122 (alternatives B & C would designate the proposed ACEC as open to oil and gas leasing with Category 3 (no surface occupancy) stipulations).

BLM's preferred alternative would also designate all or some of these parcels as VRM 1 (they are currently VRM 2 and 4). Thus, even under IM 2004-110 (Change 1), BLM should defer leasing these four parcels until the Price RMP is finalized.

2. *Temple-Cottonwood-Dugout Proposed ACEC* – UT 0206-103, UT 0206-104, UT 0206-105, UT 0206-106, UT 0206-107, UT 0206-109, UT 0206-143, UT 0206-146, UT 0206-147, UT 0206-149, UT 0206-150, UT 0206-152, UT 0206-153, UT 0206-154, UT 0206-155, UT 0206-156 UT 0206-157, UT 0206-158, UT 0206-159, UT 0206-171, UT 0206-172, UT 0206-178, and UT 0206-179 : The Price DRMP/DEIS, Alternative C considers designating the 80,818 acres Temple-Cottonwood-Dugout ACEC. The proposed ACEC is described as being designed to "protect a unique, natural desert ecosystem with exemplary opportunities for primitive recreation and wildlife viewing in a landscape of huge skies, varied geologic forms, and unique riparian ecosystems." BLM noted that "[t]he solitude of the area . . . is believed to be threatened by oil and gas exploration and development activities," among other things. The proposed ACEC would be open

to oil and gas leasing with Category 3 (no-surface occupancy) stipulations. Price DRMP/DEIS at 2-123. These lands are currently designated as Category 1 – open to leasing with standard stipulations.

3. *Wild and Scenic River Designation (San Rafael River – Scenic)* – UT 0206-171, UT 0206-172, UT 0206-173, UT 0206-174, UT 0206-175, UT 0206-198, UT 0206-199, and UT 0206-200: The Price DRMP/DEIS, Alternative C considers designating the San Rafael River as a "scenic" river pursuant to the Wild and Scenic Rivers Act (for cultural, scenic, recreation, geologic, historic, fish, wildlife, and ecological resources). Oil and gas leasing and development is contrary to this resource and special designation, and thus leasing should thus be delayed pending the completion of the Price RMP. See Price DRMP/DEIS Appendix 2-22 (listing classification criteria for wild, scenic, and recreational river areas). See also Price DRMP/DEIS at 2-30 (Alternative C would designate this section of the San Rafael River as category 3 – open to leasing with no surface occupancy stipulations).

3. BLM Failed to Take the Required "Hard Look" at Whether Its Existing Analyses Are Valid in Light of New Information or Circumstances.

NEPA requires federal agencies to take a hard look at new information or circumstances concerning the environmental effects of a federal action even after an environmental assessment (EA) or an environmental impact statement (EIS) has been prepared, and to supplement the existing environmental analyses if the new circumstances "raise[] significant new information relevant to environmental concerns." Portland Audubon Soc'y v. Babbitt, 998 F.2d 705, 708-09 (9th Cir. 1993). Specifically, an "agency must be alert to new information that may alter the results of its original environmental analysis, and continue to take a 'hard look' at the environmental effects of [its] planned actions." Friends of the Clearwater v. Dombeck, 222 F.3d 552, 557 (9th Cir. 2000). NEPA's implementing regulations further underscore an agency's duty to be alert to, and to fully analyze, potentially significant new information. The regulations declare that an agency "shall prepare supplements to either draft or final environmental impact statements if . . . there are significant new circumstances or information relevant

to environmental concerns and bearing on the proposed action or its impacts." 40 C.F.R § 1502.9(c)(1)(ii) (emphasis added).

As explained below, the Price field office failed to take a hard look at new information and new circumstances that have come to light since BLM finalized the 1975 Price EAR, the San Rafael RMP/EIS, as well as subsequent oil and gas EAs. See also Pennaco Energy, 377 F.3d at 1162 (explaining that DNAs determine whether "previously issued NEPA documents were sufficient to satisfy the 'hard look' standard," and are not independent NEPA analyses). In addition, to the extent that the Price field office took the required hard look, its conclusion that it need not prepare a supplemental NEPA analysis was arbitrary and capricious.

1. *Wilderness Inventory Areas (WIA)*

BLM has arbitrarily determined that the sale of 13 lease parcels (UT 0206-197, UT 0206-198, UT 0206-201, UT 0206-202, UT 0206-204, UT 0206-205, UT 0206-206, UT 0206-209, UT 0206-210, UT 0206-211, UT 0206-212, UT 0206-213, and UT 0206-214 located in whole or in-part within the Labyrinth Canyon WIA is appropriate – despite acknowledging that there is "significant new information" about the area's wilderness characteristics that is not considered in current NEPA analyses.

The Labyrinth Canyon WIA was inventoried between 1996-98 by the BLM as part of the agency's larger Utah wilderness inventory and determined to contain the necessary wilderness characteristics as defined in the Wilderness Act, 16 U.S.C. §§ 1131 et seq., for potential entry into the National Wilderness Preservation System. See Utah Wilderness Inventory, at vii-ix (1999) (excerpts attached as Exhibit 3). See also Map – Green River Area Lease Parcels (attached as Exhibit 4). As the BLM's wilderness inventory documentation explained,

> The Secretary's instructions to the BLM were to "focus on the conditions on the disputed ground today, and to obtain the most professional, objective, and accurate report possible so we can put the inventory questions to rest and move on." [The Secretary] asked the BLM to assemble a team of experienced, career professionals and directed them to apply the same legal criteria used in the earlier inventory and the same definition of wilderness contained in the 1964 Wilderness Act.

Utah Wilderness Inventory, at vii (emphasis added). As the result of this review, the BLM determined that its earlier wilderness inventories had failed to recognize 2.6 million acres of lands that met the applicable criteria in its prior reviews, including the Squaw and Papoose Canyon WIA. See State of Utah v. Babbitt, 137 F.3d 1193, 1198-99 (10th Cir. 1998) (discussing history of BLM's Utah wilderness inventories). Importantly, the San Rafael RMP/EIS – prepared after the 1978-80 wilderness inventory – did not reanalyze the wilderness characteristics of lands that were passed over for wilderness study area status. Rather, that plan and its accompanying NEPA analysis merely adopted the conclusion that lands not identified as WSAs did not contain wilderness characteristics.

As part of its 1996-98 wilderness inventory, BLM compiled comprehensive case files to support its findings that this WIA has wilderness characteristics, including numerous aerial and on-the-ground photographs, as well as a detailed narrative with accompanying source materials and SUWA incorporates these documents, located in the Utah State office, by reference to this protest. See also Utah Wilderness Inventory, at 79 (Labyrinth Canyon WIA) (attached as Exhibit 3). Based on the candid statements in these wilderness files that the 1998 Wilderness Inventory provided significant new information that has not been analyzed in existing NEPA documentation, it is clear that parcels UT 0206-197, UT 0206-198, UT 0206-201, UT 0206-202, UT 0206-204, UT 0206-205, UT 0206-206, UT 0206-209, UT 0206-210, UT 0206-211, UT 0206-212, UT

0206-213, and UT 0206-214 must be removed from the February 2006 sale list. BLM's failure to do so is a clear violation of NEPA because: (a) the 1996-98 wilderness inventory is undeniably new information, as BLM itself admits; (b) this wilderness inventory meets the textbook definition of what constitutes "significant" information; and (c) the sale of non-NSO leases constitutes an irreversible and irretrievable commitment of resources and thus requires a pre-leasing EIS.

Moreover, BLM cannot credibly claim that it has ever taken a hard look at the impact that oil and gas development would have on the wilderness characteristics of the WIAs because the wilderness case files post-date the 1991 San Rafael RMP/EIS. At the time that document were prepared, the BLM did not know that this area contained wilderness quality lands. Hence, the San Rafael RMP/EIS does not contain the type of site specific information about the wilderness characteristics of the Labyrinth Canyon WIA that was provided in the BLM's own 1998 wilderness inventory evaluation, nor could it analyze the impacts of energy development on those characteristics. That BLM's earlier land use plans and NEPA analyses may have discussed in general terms the values of these lands, is no substitute for the required hard look at the impacts of oil and gas development on wilderness characteristics. See Pennaco Energy, 377 F.3d at 1162 (explaining that DNAs determine whether "previously issued NEPA documents were sufficient to satisfy the 'hard look' standard," and are not independent NEPA analyses). In sum, BLM's own wilderness inventory evaluations and comprehensive case files constitute precisely the type of significant new information that requires additional environmental analysis before BLM approves the irreversible commitment of resources – the February 2006 lease sale.

To the extent BLM contends that it has taken a hard look at the 1996-99 wilderness inventory files and determined that the wilderness inventory did not provide significant new information, that argument is undercut by the Price DRMP/DEIS' consideration of means to protect the Labyrinth Canyon WIA's wilderness characteristics. In other words, if BLM did not consider the wilderness characteristics currently found in the lands comprising the WIA to be significant new information and a significantly different resource than what was considered in the San Rafael RMP/EIS, then it would have no reason to be considering means to protect those resources and values. As noted above, the Alternatives B and C (and in some instances D) in the Price DRMP/DEIS would impose a variety of protections in large areas of the Labyrinth Canyon WIA and the 13 lease parcels at issue here, including: category 3 lease stipulations (no surface occupancy leasing); designation of 2 ACECs (Lower Green River and Dry Lake); VRM Class 1; wild and scenic river designation (recreation/scenic); and the Labyrinth Canyon SRMA.

2. *Reasonable Probability Determinations and Citizen Wilderness Proposal*[3]

SUWA has provided new and significant information to the BLM regarding the wilderness characteristics of the Sweetwater Reef, San Rafael River, and Flat Tops proposed wilderness units and BLM has determined that there is a "reasonable probability" that these units "may have" wilderness characteristics. See Evaluation of New Information Suggesting that an Area of Public Lands has Wilderness Characteristics for San Rafael River and Sweetwater Reef (attached as Exhibit 3). See also Map – Green River Area Lease Parcels (attached as Exhibit 4).

[3] In the Price field office DNA prepared for the December 2004 lease sale, agency staff correctly determined that oil and gas leasing should be delayed until information regarding wilderness characteristics in the Sweetwater Reef and San Rafael River proposed wilderness areas was evaluated to determine if it was significant new information.

The same concerns identified supra regarding BLM's outdated San Rafael RMP/EIS applies to these lands that BLM determined have a reasonable probability that they may contain wilderness characteristics. Specifically, BLM's plans and analyses assumed that – based on earlier desk exercise inventories the lands now encompassed by the Sweetwater Reef, San Rafael River, and Flat Tops proposed wilderness units lacked wilderness character altogether. The information that SUWA has supplied to BLM – and that BLM has reviewed and confirmed – is undeniably new, significant information about the on-the-ground conditions of these lands. Thus, BLM must prepare a supplemental NEPA analysis to evaluate this information before leasing these parcels.

3. *BLM Specialist Concerns*

In addition, the following concerns (proposed lease stipulations and/or lease sale notices) were identified by Price field office staff in December 2004 for the sale of the exact same lease parcels (in some instances and justification for deferral of the parcels and in others as mitigation). See Price field office DNA – December 2004 Lease Sale (attached as exhibit 2). These stipulations and notice are inexplicably missing here. The record does not contain an explanation why these concerns were not incorporated into lease sale stipulations/lease notices for this sale, and thus BLM should defer leasing until these stipulations and notices have been reviewed. A decision not to include these stipulations and notices – without documentation and support by agency staff – would be arbitrary and capricious.[4]

> **Lease Stipulation/Notice – Antelope Fawning Habitat**: UT 0206-106, UT 0206-107, UT 0206-108, UT 0206-109, UT 0206-143, UT 0206-144, UT 0206-145, UT 0206-146, UT 0206-147, UT 0206-148, UT 0206-149, UT 0206-150, UT 0206-151, UT 0206-157, UT 0206-158, UT 0206-159, UT 0206-170, UT 0206-

[4] The so-called "Price field office lease notice" (UT-LN-56) is simply a restatement of BLM's existing authority under the so-called "60-day/200-meter rule." See 43 C.F.R. § 3101.1-2.

> 174, UT 0206-176, UT 0206-177, UT 0206-178, UT 0206-179, and UT 0206-180);
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> **Lease Stipulation/Notice – Soils**: UT 0206-107, UT 0206-108, UT 0206-143, UT 0206-146, UT 0206-147, UT 0206-158, UT 0206-159, and UT 0206-170; and
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> **Lease Notice – Cultural Resources**: UT 0206-143, UT 0206-144, UT 0206-145, UT 0206-146, UT 0206-147, UT 0206-148, UT 0206-149, UT 0206-150, UT 0206-151, UT 0206-157, UT 0206-158, UT 0206-159, UT 0206-169, UT 0206-170, UT 0206-171, UT 0206-172, UT 0206-173, UT 0206-174, UT 0206-175, UT 0206-176, UT 0206-177, UT 0206-178, UT 0206-179, and UT 0206-180.

In addition, BLM erroneously failed to include the following lease notice, even though these three lease parcels are immediately adjacent to the Green River:

> **Lease Notice – Endangered Fish of the Upper Colorado River Drainage Basin**: UT 0206-197, UT 0206-201, and UT 0206-204.

4. Failure to Analyze Impacts of Oil and Gas Leasing and Development to Dinosaur National Monument.

To ensure that the combined effects of separate activities do not escape consideration, NEPA requires BLM to consider cumulative environmental impacts in its environmental analyses. See Davis v. Mineta, 302 F.3d 1104, 1125 (10th Cir. 2002); see also Grand Canyon Trust v. Federal Aviation Admin., 290 F.3d 339, 345-47 (D.C. Cir. 2002). NEPA's regulations provide that "effects" includes ecological, aesthetic, and historic impacts, "whether direct, indirect, or cumulative." 40 C.F.R. § 1508.8. "Cumulative impact," in turn, is defined as:

> the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

Id. § 1508.7.

Based on these regulations, NEPA documents must provide useful analysis of past, present, and future actions. City of Carmel-By-The-Sea v. U.S. Dept. of Transp.,

123 F.3d 1142, 1160 (9th Cir. 1997); Muckleshoot Indian Tribe v. U.S. Forest Serv., 177 F.3d 800, 809-810 (9th Cir. 1999). As the D.C. Circuit has held, the fact that a project may result in even a small incremental increase in the overall impacts to a resource is meaningless if "there is no way to determine . . . whether [this small increase] in addition to the other [impacts], will 'significantly affect' the quality of the human environment." Grand Canyon Trust, 290 F.3d at 346.

Here, the Vernal field office DNA failed to analyze the potentially significant direct, indirect, and cumulative impacts of the development of parcel UT 0206-226. In particular, the DNA failed to consider not only the effects of this leases on Dinosaur National Monument, but also the cumulative impacts on the Monument that will occur as a result of the combination of this lease sale, along with other recent leases sold by Utah BLM and additional leases sold by Colorado BLM near the Monument, and other past, present and reasonably foreseeable future activities that could affect the Monument.

Parcel UT 0206-226 is located immediately adjacent to Dinosaur National Monument and just south of the Monument's Utah visitor center. See Map – Vernal Area Lease Parcels (attached as Exhibit 6). Indeed, the Monument manager specifically requested that BLM defer UT 0206-226, but BLM refused to do so arguing that (1) a part of UT 0206-226 is on private surface and the surface owner agreed to leasing and (2) that BLM included several lease notices on the parcel. See Letter from Mary Risser, Superintendent Dinosaur National Monument to William Stringer, Vernal field office manager (Nov. 15, 2005) and Letter from William Stringer to Mary Risser (Nov. 29, 2005) with December 22, 2005 fax from Thunder Ranch to BLM) (letters attached as exhibit 7). BLM apparently relies on the fax from Thunder Ranch to argue that the surface owner has agreed that leasing is appropriate, but that letter pertains only to BLM

lands south of Highway 40: "Thunder Ranch has no objections to oil or gas drilling exploration on the BLM ground anywhere South of Highway 40 in Jensen, Utah." In addition, Parcel UT 02060-226 is located north of Highway 40 and the fax from Thunder Ranch says nothing about leasing on private surface lands.

Oil and gas exploration and development on this parcel threatens a number of the Monument's resources as described below. Furthermore, development of this parcel, in combination with development of the parcels recently sold by both Colorado and Utah BLM in February 2004 and February 2005 will impact a number of the Monument's resources. Nevertheless, the BLM has not analyzed the impacts of potential development of parcel UT 0206-226 on the resources of Dinosaur National Monument. Nor has it mentioned cumulative impacts that the Monument's resources will experience as a result of the agency's decisions to lease numerous parcels in close proximity to the Monument on both sides of the Utah-Colorado border. The BLM's decision to offer this parcel without the requisite NEPA analysis violates its duty to evaluate, consider, and take a hard look at the impacts of these lease sales on the resources discussed below.

a. The Proposed Leases Threaten the Monument's Visitor Experience, Including its Viewsheds, Dark Night Skies, and Natural Quiet.

A visitor to Dinosaur National Monument is currently presented with stunning vistas that epitomize the rugged yet beautiful scenery of the Colorado Plateau. At Echo Park, the Green and the Yampa rivers, two of the great rivers of the west, come together in a grand confluence overshadowed by sheer cliffs hundreds of feet high. In the 1950s, the Bureau of Reclamation attempted to put a dam at Echo Park, sparking a firestorm of controversy in which thousands of concerned citizens opposed the proposed development. This culminated in legislation to protect the Monument, but now the

Monument is again at risk from the BLM's ill-considered decision to offer oil and gas leases that threaten to surround the Monument with industrial development.

The boundaries of Dinosaur National Monument were drawn to include the primary features of the Green and Yampa River canyons. See Exhibit 8 General Management Plan, Development Concept Plans, Land Protection Plan Environmental Assessment – Dinosaur National Monument ("Dinosaur Monument Management Plan") (excerpts), at 1 (1938 Presidential Proclamation expanded the Monument "to include the river corridors and adjacent viewsheds for the major canyons of the Green and Yampa rivers"). As a result, many of the spectacular vistas from the Monument's many scenic overlooks view unprotected BLM lands outside of the Monument. These unprotected wild lands encompass critical Monument viewsheds, as well as the upstream segments of the Monument's watersheds.

These lands, and the viewshed of the Monument, are put at risk by the current leasing proposal. As seen in the attached viewshed analysis map – and as noted by the Dinosaur National Monument Superintendent - Utah lease parcels UT 0206-226 will be visible both from within the Monument and from roads providing access to it. See Exhibit 9, Map – Final Oil and Gas Lease Sale Parcels in the Viewshed of Dinosaur National Monument (last updated February 2005) (parcel UT 0206-226 is immediately adjacent to UT 0204-068 and UT 0204-108). See also Exhibit 7 (correspondence between BLM and Dinosaur National Monument). Most of parcel UT 0206-226 will be visible from the several overlooks within the Monument. Development virtually anywhere on that particular lease would therefore mean that a Park visitor would only have to turn around from the spectacular view of Split Mountain to be confronted with views of oil and gas exploration and drilling – a view that would obviously detract from

any visitor's experience and would be directly at odds with the Monument's objective to "[p]rotect monument resources and values from adverse external influences." See Dinosaur Monument Management Plan, at 252.[5]

Moreover, the impacts of oil and gas development on UT 0206-226 would not be limited to spoiling the Monument's daytime viewshed. The Monument enjoys dark night skies that allow for unobscured stargazing impossible in brightly lit urban and industrialized areas. Development on this lease not only within the Monument's viewshed but also nearby could contribute to light pollution that would detract from the natural darkness currently enjoyed by Monument visitors. Moreover, development, especially that occurring nearby, would contribute pollutants that could decrease visibility in the Monument both during the day and at night. Neither the Vernal DNA, nor the underlying land use plans, consider oil and gas exploration and development impacts to the Monument's night skies, nor the cumulative impacts to the same of development of this lease in conjunction with the leases sold by Colorado and Utah BLM in February 2004 and February 2005.

Development of this lease would also introduce noise associated with exploration and construction, including sounds made by heavy exploration, drilling, and extraction equipment. Visitors to the Monument currently enjoy the opportunity to experience quiet surroundings undisturbed by noises associated with human disturbance. This would change as a result of development on many of these leases. Sounds carry far in quiet areas, especially in canyons. Yet the Vernal field office never considered these impacts on the Monument, nor the combination of these impacts with those generated by development of leases just across the border in Colorado.

[5] Moreover, oil and gas development could indirectly harm the Monument's viewsheds through by decreasing visibility. See infra.

The Park Service itself specifically identified "oil and gas exploration and extraction adjacent to the monument boundary, resulting in noise, visual impacts, ground disturbance, water pollution, etc." as an activity that would "affect or potentially affect natural and scenic resources within the boundary." See Dinosaur Monument Management Plan, at 108-109. Yet the BLM has failed to consider or mention these effects in the Vernal DNA on the Monument in approving the sale of parcel UT 0206-226. Moreover, the increase in Park visitation, necessitates further analysis before allowing leasing on parcels that will affect Monument viewsheds. Thus, before the BLM can offer this lease, it must analyze the cumulative impacts to viewsheds, night skies, and natural quiet of offering leases that are so close to the Monument.

b. Monument Air Quality and Visibility

In addition to seeking to protect the Monument's viewsheds, night skies, and natural quiet, the Monument Management Plan also calls for "the protection of pristine air quality within legislative constraints. Dinosaur National Monument is currently a class II air quality area under the Prevention of Significant Deterioration provisions of the Clean Air Act . . . and a category 1 under Colorado air quality standards." See Dinosaur Monument Management Plan, at 26. The Monument's management plan also recognized that energy developments planned nearby could "soon approach or exceed the allowable class II increment . . . ." Currently, according to the Monument, visibility from the Escalante overlook is impacted by the Bonanza Power Plant south of Vernal, Utah.[6] The Park Service also recognized in 1985 that oil and gas extraction "within or near the monument could affect the monument's air quality," and that "baseline studies regarding the monument's air quality and acid deposition" needed to be undertaken in order to

[6] The Monument management plan referenced a proposed oil shale project that was never developed.

measure potential impacts from mineral development. Id. at 27. While the Vernal DNA states that the leasing of this Utah parcel will not exceed the Uintah Basin's current PSD Class II increments, or the Monument's Class I for SO_2, it did not consider the cumulative impacts to the Monument's air resources from its offering leases in close proximity to the Monument on both sides of the Colorado-Utah border. See Vernal DNA, at 6. Thus, there is no means by which the BLM, and the Department of the Interior, can confirm that the decision to offer these leases will not, with subsequent development, prevent the Monument from achieving its goal of "[p]reserv[ing] pristine air quality in accordance with the Clean Air Act, as amended." See Dinosaur Monument Management Plan, at 252.

B. Leasing the Contested Parcels Violates the NHPA[7]

BLM's decision to sell and issue leases for the 64 parcels at issue in this protest violates § 106 of the NHPA, 16 U.S.C. § 470(f) and its implementing regulations, 36 C.F.R. §§ 800 et seq. Specifically, BLM's conclusion that a "No Historic Properties Affected" determination for the February 2006 oil and gas lease sale is arbitrary and capricious.[8]

As Utah BLM has recognized for some time, the sale of an oil and gas lease is the point of "irreversible and irretrievable" commitment and is therefore an "undertaking"

[7] To the extent that BLM's issued Instruction Memorandum 2005-003 Cultural Resources and Tribal Consultation for Fluid Mineral Leasing, Oct. 5, 2004, is inconsistent with the Interior Board of Land Appeals' decision in Southern Utah Wilderness Alliance, 164 IBLA 1 (2004), the BLM must comply with the IBLA's interpretation of the agency's duties under the NHPA. See 43 C.F.R. § 4.1(b)(3).

[8] The November 2005 Price field office DNA and multiple staff reports that considered the impacts of oil and gas leasing to historic properties in the virtually the same geographic area as the February 2006 lease sale arrived at different conclusions as to whether that lease sale had "no potential to effect," "no effect," or "no adverse effect" on cultural resources. The final DNA worksheet stated that the lease sale would have "no effect" on historic properties. See November 2005 Price DNA at 5 (attached as Exhibit 10). In its letter to SHPO, however, BLM conceded that the sale of 26 parcels in the San Rafael Desert region "could result in adverse effects." See Letter from Patrick Gubbins to Wilson Martin, August 30, 2005. The Price field office February 2006 oil and gas lease sale DNA took a different approach and alleged that the lease sale "may be viewed as a No Historic Properties Affected; eligible sites present, but not affected as defined by 36 C.F.R. § 800.4.

under the NHPA. See BLM Manual H-1624-1, Planning for Fluid Mineral Resources, Chapter I(B)(2); see also 36 C.F.R. § 800.16(y); Montana Wilderness Assoc. v. Fry, 310 F. Supp. 2d 1127, 1152-53 (D. Mont. 2004); Southern Utah Wilderness Alliance, 164 IBLA at 21-28. The NHPA's implementing regulations further confirm that the "[t]ransfer, lease, or sale of property out of federal ownership and control without adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the property's historic significance" constitutes an "adverse effect" on historic properties. Id. § 800.5(a)(2)(vii) (emphasis added). See 65 Fed. Reg. 77689, 77720 (Dec. 12, 2000) (Protection of Historic Properties – Final Rule; Revision of Current Regulations) (discussing intent of § 800.5(a)(2)(iii)).

The February 2006 Price DNA, however, erroneously concludes that, despite the field office archeologist's well-documented conclusions in the November 2005 lease sale DNA that any level of oil and gas exploration activities (activities authorized by the sale of non-NSO oil and gas leases) in the San Rafael Desert region will adversely affect cultural resources, the sale of the 59 Price field office parcels challenged in this protest will in fact have No Historic Properties Affected on cultural resources. See November 2005 Price DNA at 5 (asserting that Price field office managers "determined that because there is no documentation, field work, cultural survey documentation, science, or clear rationale, to substantiate a 'may adversely effect' determination, to change the determination to no effect and move forward with leasing these parcels.") (attached as Exhibit 10). See also February 2006 Price DNA at 6. But see id. Cultural Resource Assessment of BLM's Offered Oil & Gas Lease Sale Parcels #UT1105-048 TO UT1105-059, UT1105-064 TO UT1105-065, UT1105-071 TO UT1105-086, UT1105-093 TO

UT1105-099; Carbon and Emery Counties, Utah at unnumbered 7-9 (parcel assessment)[9] (describing affected environment for San Rafael Desert parcels and – relying on decades of personal experience, research and discussions with other archeologists – detailing risk to cultural resources from leasing and development; concluding that the "[l]ease of these parcels will adversely affect historic properties."); Letter from Patrick Gubbins to Wilson Martin, SHPO (Aug. 30, 2005) (admitting that the sale of San Rafael Desert region leases "could result in adverse effects" to cultural resources) (included in November 2005 Price DNA – attached as Exhibit 10). The lease notice attached to some – but not all – of the San Rafael Desert parcels is insufficient for BLM to propose a "no historic properties affected" finding (as stated in the DNA) and thus BLM's decision to proceed with the sale of these parcels is arbitrary and capricious.

In addition, brief conversations with, or form letters to, tribal councils or leaders regarding the potential effects of oil and gas leasing and development are insufficient to meet BLM's duty under the NHPA to make a "reasonable and good faith effort" to seek information from Native American tribes. See Pueblo of Sandia v. United States, 50 F.3d 856 (10th Cir. 1995). To the extent that BLM's field offices undertook limited efforts to involve Native American tribes, these efforts were inadequate because the form letters, legal descriptions, and maps do not inform the various Native American tribes that these offices had arrived at a "no historic properties affected" findings and thus were seeking agreement to that finding, as opposed to soliciting general comments about the undertaking. In particular, the form letters sent to various tribes by the Price field office manager did not explain the research that the field office archeologist had prepared a few months earlier for the November 2005 regarding the sale of parcels in the San Rafael

[9] This report is included in the November 2005 Price DNA, Appendix C (Staff Reports).

River and Sweetwater Reef areas (generally referred to as the "San Rafael Desert") or detail the archeologist's concerns about adverse effects to this important area from any future exploration activities.

In addition, there is no record that the Price field office requested SHPO review of that office's "no adverse effects" determination – and thus likewise there is no record of a response from SHPO. BLM will violate the NHPA if it issues these leases without concurrence from SHPO.

In addition, there is no record that the Vernal field office archaeologist conducted a class I inventory for parcel UT 0206-226. See Vernal DNA Addendum 2 (Consolidated Interdisciplinary Team Review of Preliminary Parcels for February 2006 Oil and Gas Lease Sale), at 2-6 (mentioning UT 0206-226, but not including this parcel in the "parcel discussion" on pages 3-5).

BLM is further violating the NHPA by failing to adequately consult with members of the interested public regarding the effects of leasing all the protested parcels. Such consultation must take place before the BLM makes an irreversible and irretrievable commitment of resources – in other words before the February 2006 lease sale. See Southern Utah Wilderness Alliance, 164 IBLA 1 (2004). The NHPA requires BLM to "determine and document the area of potential effects, as defined in [36 C.F.R.] § 800.16(d)," identify historic properties, and to affirmatively seek out information from the SHPO, Native American tribes, consulting parties, and other individuals and organizations likely to have information or concerns about the undertaking's potential effects on historic properties. 36 C.F.R. § 800.4(a). See Southern Utah Wilderness Alliance, 164 IBLA at 23-24 (quoting Montana Wilderness Assoc., 310 F. Supp. 2d at 1152-53). The NHPA further states that BLM shall utilize the information gathered from

the source listed above and in consultation with at a minimum the SHPO, Native American tribes, and consulting parties "identify historic properties within the area of potential affect." Id. § 800.4(b). See id. § 800.04(b)(1) (discussing the "level of effort" required in the identification process as a "reasonable and good faith effort to carry out appropriate identification efforts").

The DNA process also violates the NHPA and Protocol § IV.C., which states that "BLM will seek and consider the views of the public when carrying out the actions under terms of this Protocol."[10] As BLM's DNA forms plainly state, the DNA process is an "internal decision process" and thus there is no opportunity for the public to participate in the identification of known eligible or potentially eligible historic properties. Permitting public participation only at the "protest stage," or arguing that the time period for seeking public input ended when BLM completed its dated resource management plans, is not equivalent to encouraging participation in an open NEPA process, and BLM should withdraw the 64 parcels in the Price, Monticello, Vernal and Richfield field offices that are the subject of this protest.

C. Leasing the Contested Parcels Violates the ESA

There is no record that the Price field office either initiated or completed informal consultation with the U.S. Fish and Wildlife Service regarding the February 2006 lease sale, though several of the FWS's 2004-2005 letters to the Utah State office identified potential threatened and endangered species within several of the parcels proposed for sale. A decision to sell and issue the 59 leases in the Price field office without first completing informal – or, if required, formal – consultation with the Fish and Wildlife

[10] Because the National Programmatic Agreement – which the Protocol is tiered from – was signed in 1997, well before the current NHPA regulations were put in place, it is questionable whether either document remains valid. This further reinforces the need for BLM to fully comply with the NHPA's Section 106 process.

Service will violate the ESA. See Montana Wilderness Assoc. v. Fry, 310 F. Supp. 2d at 1149; Wyoming Outdoor Council, 153 IBLA at 388-89; Conner v. Burford, 848 F.2d 1441, 1453 (9th Cir. 1988).

REQUEST FOR RELIEF

SUWA requests the following appropriate relief: (1) the withdrawal of the 64 protested parcels from the February 2006 Competitive Oil and Gas Lease Sale until such time as the agency has complied with NEPA, the NHPA, and the ESA or, in the alternative (2) withdrawal of the 64 protested parcels until such time as the BLM attaches no-surface occupancy stipulations to all protested parcels.

This protest is brought by and through the undersigned legal counsel on behalf of the Southern Utah Wilderness Alliance, the Natural Resources Defense Council, The Wilderness Society, and the Grand Canyon Trust. Members and staff of these organizations reside, work, recreate, or regularly visit the areas to be impacted by the proposed lease sale and therefore have an interest in, and will be affected and impacted by, the proposed action.

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